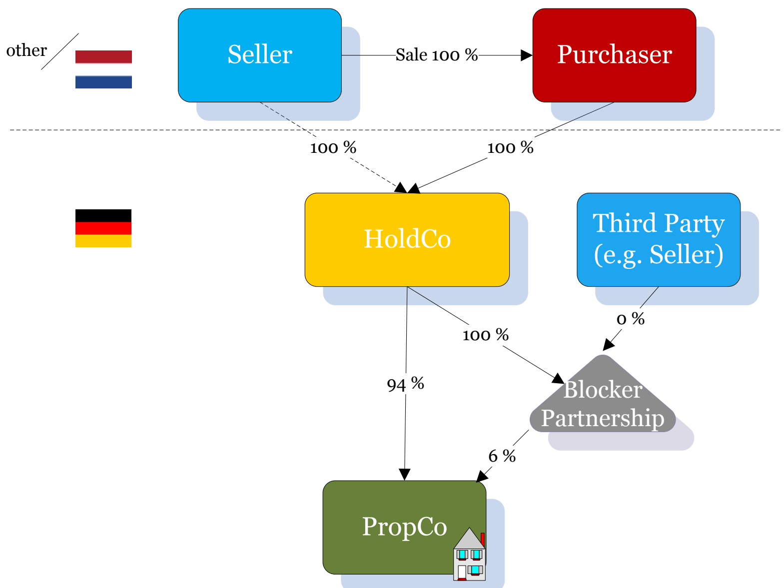
Real estate transfer tax (RETT) Blocker

General information of RETT and previous RETT blocker structure



- In general, German real estate transfer tax ("**RETT**") is triggered if real estate situated in Germany is sold or transferred to a new owner.

- Apart from that, the transfer of shares/interest in companies owning German real estate may trigger RETT as well if thereby at least 95% of the shares/interest are (i) accumulated or (ii) transferred to new shareholder(s). This rule often triggers RETT in case of share deals once the so called 95%-threshold is reached or exceeded.

- RETT rates are currently between 3.5% and 6.5% of the specific tax value of the real property, based on the location of the real estate (each German Federal state is allowed to decide on the applicable RETT rate itself).

- RETT can be avoided if RETT blocker structures are implemented. In the past, the interposition of a partnership holding more than 5% of the shares in the real estate-owning company ("**PropCo**") was a commonly used model. In the structure shown on the left, RETT could be avoided if a Third Party also participated in the partnership even if the interest amounted to 0% due to formal company law reasons.

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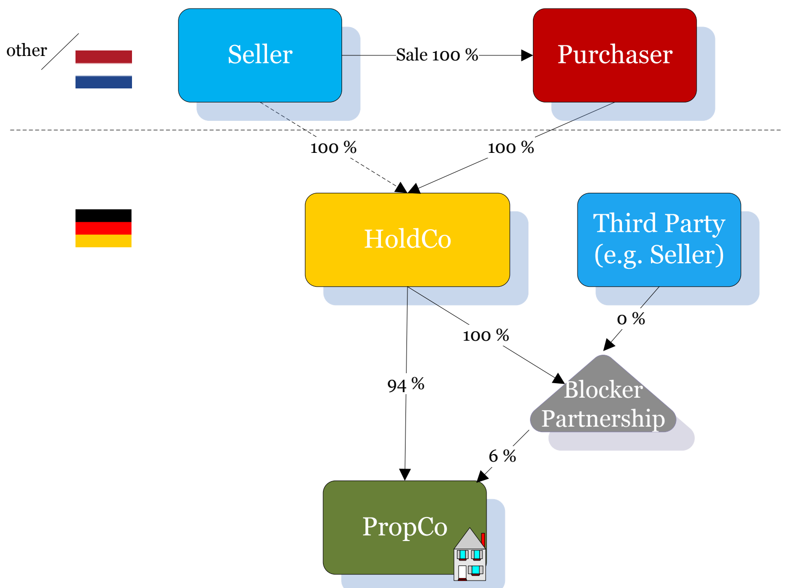
RETT – New substance-over-form approach



- According to the **newly implemented anti-RETT-blocker provision** in Sec. 1 (3a) of the German RETT Act, a stricter substance-over-form approach for calculating the 95% threshold applies. All direct or indirect shareholdings in a property company are now being considered (pro rata), even indirect minority holdings.

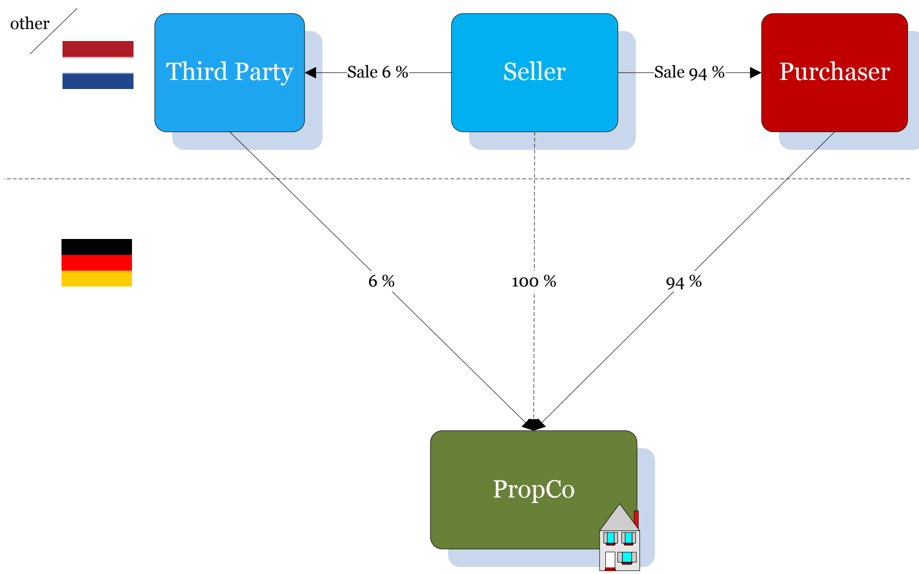
- The new substance-over-form approach is applicable if a taxpayer, directly or indirectly, or partly directly and partly indirectly, acquires an economic participation of at least 95% in a company or partnership owning real estate in Germany.

- In the example shown on the left, the purchaser acquired an indirect economic participation in PropCo of 100%. 94,9% of this economic participation are held via HoldCo. 5,1% of this economic participation are held via HoldCo and the Partnership. Thus, the interposition of a partnership (as described on page 1) is no longer a suitable way for avoiding RETT.

- The new substance over form provision applies with effect from 7 June 2013 onwards.

RETT optimised structures still valid under the new substance-over-form approach

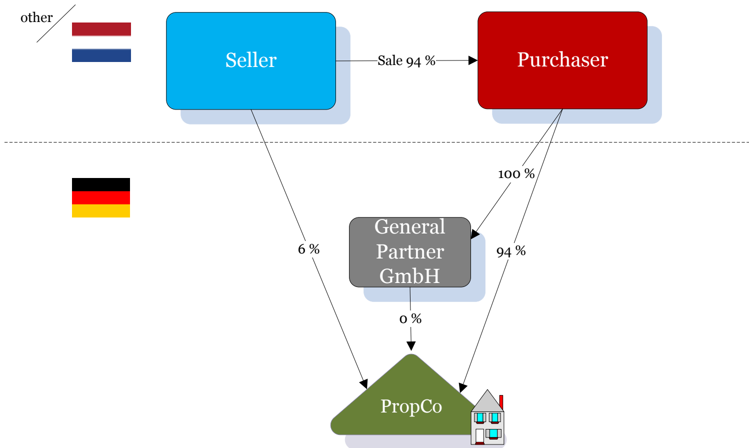
RETT Blocker – 94/6 Model



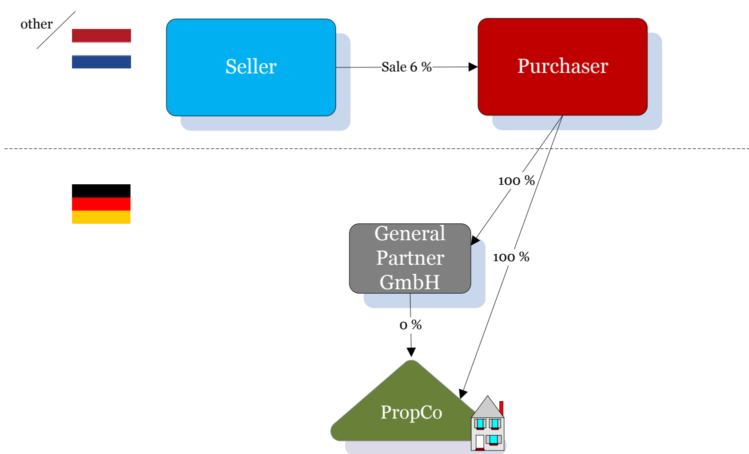
- A typical way to avoid RETT is the so called 94/6 model. In this scenario, the Purchaser acquirers only 94% of the shares in the corporation owning German real estate.
- A non-affiliated third party acquires the remaining shares of 6% in PropCo.
- As an alternative, the Seller can also continue to hold the remaining shares of 6% in PropCo.
- The acquisition of 94% of the shares in PropCo by the Purchaser will not trigger RETT since the 95%-threshold is not reached or exceeded.
- For the same reasons, the acquisition of 6% of shares in PropCo by a non-affiliated third party will not trigger any RETT either.

RETT Blocker – 5-Year-Model

Step 1 – Acquisition of 94 %:



Step 2 – Acquisition of 6 % (> 5 years):



- A more refined model that allows the Purchaser to take over the entire participation in PropCo after a holding period of 5 years can be implemented provided PropCo is a partnership.
- In a first step, the Purchaser acquires from the Seller 94% of the interest in PropCo and 100% of the shares in General Partner GmbH. The seller continues to hold 6% of the interest in PropCo after completion of step 1.
- In a second step, after a holding period of more than five years, the Purchaser acquires from Seller the remaining interest of 6% in PropCo. The Seller is no longer a partner of PropCo after the completion of step 2.
- Step 1 will not trigger RETT since the 95% threshold is not reached or exceeded.
- Step 2 will trigger RETT. However, 94% of the RETT will not be imposed since the five year holding period applicable to partnerships owning German real property has lapsed according to Sec. 6 (2) of the German RETT Act.

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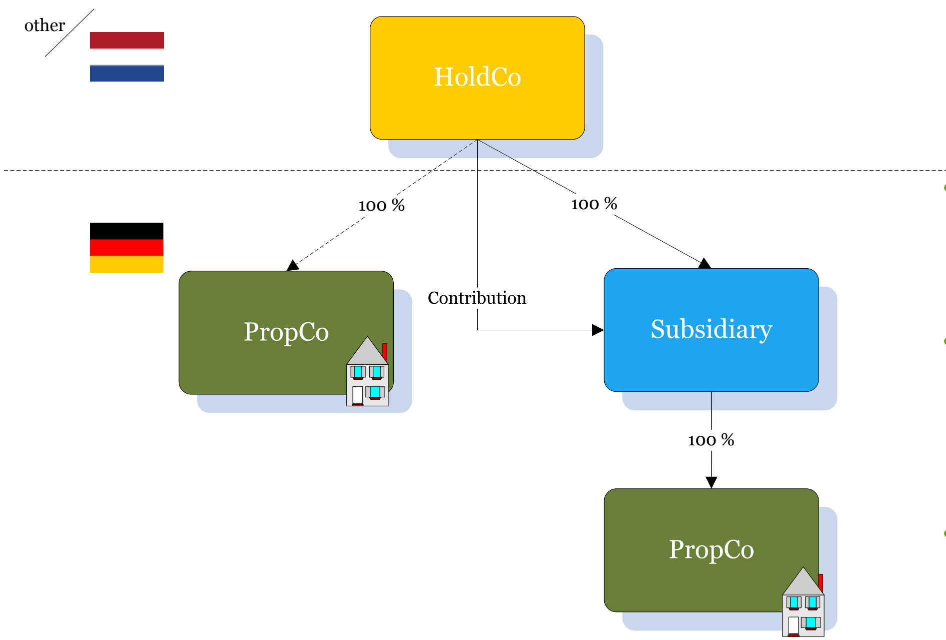
RETT-Blocker – Intra-group-privilege



- RETT can also lead to a substantial cash outflow if companies owning German real estate are shifted to a new shareholder within a group of affiliated companies. Such intra-group restructurings may trigger RETT in case the direct or indirect shareholding in a subsidiary owning German real property is affected.
- Pursuant to the intragroup RETT privilege, specific intragroup reorganizations such as mergers, spin-offs and split-offs may be exempted from RETT.
- With effect from 7 June 2013, the RETT privilege also includes intra-group contributions by way of singular succession as well as certain other reorganisations within a group.
- Among other requirements, the tight pre-holding and subsequent-holding period of 5 years needs to be observed in each case in order to benefit from the intra-group privilege.
- In the example on the left, no RETT is triggered by the contribution of shares in PropCo into the Subsidiary of HoldCo provided that the 5 year holding-period and the other requirements of the intra-group privilege are fulfilled.

Bird & Bird

Prof. Dr. Patrick Sinewe

Partner

patrick.sinewe@twobirds.com
Tel. +49 (0) 69 74222 6141

Dr. Henning Frase

Tax Advisor / Attorney-at-Law

henning.frase@twobirds.com
Tel. +49 (0) 69 74222 6145

Marcel Jundt
Associate

marcel.jundt@twobirds.com
Tel. +49 (0) 69 74222 6130

Alexander Bellheim
Tax Advisor / Attorney-at-Law

alexander.bellheim@twobirds.com
Tel. +49 (0) 69 74222 6147

Thank You & Bird & Bird